

RAJASTHAN HIGH COURT

Rajasthan H.C. Advocates Association

Vs.

State of Rajasthan

Civil Writ petn. No. 1486, 1167, 1485, 1622 and 1238 of 1998
(Ar. Lakshmanan and Bhagwati Prasad, JJ.)

20.02.2001

JUDGEMENT

Bhagwati Prasad, J

1. The petitioner, Rajasthan High Court Advocates Association, an Association of the Advocates Practicing at Jodhpur, has moved certain writ petitions. In these writ petitions, the petitioner Association has prayed that the Principal Seat/Bench/ circuit Benches of the various Tribunals be established at Jodhpur. The prayer made in various writ petitions is delineated herein below :

S. No. Writ Petition Prayer made for establishment of

1. 1486/1998 Principal Seat of the Board of Revenue at Jodhpur.
2. 1167/1998 Rajasthan State Transport Appellate Tribunal
3. 1485/1998 Rajasthan Cooperative Tribunal
4. 1622/1988 Rajasthan Non-Government Educational Institution Tribunal
5. 1238/1998 Motor Accident Claims Tribunal

2. For the purposes of deciding the controversy, the facts relating to the demand for establishment of the Board of Revenue for Rajasthan at Jodhpur are taken into consideration.

3. According to the petitioner, it is deeply concerned about the balanced development of the State, particularly Western Rajasthan which had been the subject-matter of neglect by all the Governments of the State. The petitioner has averred that at the time of formation of the State of Rajasthan and reorganization of the State, it was principally agreed that the Jaipur shall be the political capital and Jodhpur shall be the

judicial capital. The claim of Jodhpur is stated on the basis that this is the second largest city of the State.

4. It has been stated in the writ petition that initially understanding of keeping an unified High Court at Jodhpur was given effect to, but subsequently for certain vested and political reasons the High Court was bifurcated. Importance which Jodhpur deserved was not given to it. It has been contended that on account of continued neglect of this region, regional imbalance has resulted into dissatisfaction and frustration of the public. It was also resulted in the increased dissatisfaction in the border districts of the border State of the country. By continued neglect of the executive and in political circles there has virtually been no development in the city of Jodhpur and its adjoining areas.

5. A circuit bench of the Board of Revenue has been constituted at Jodhpur but its seating's are only occasional. There being no regular bench of the Board of Revenue at Jodhpur great inconvenience has been caused to the litigants of Western Rajasthan. The petitioner has contended that since the principal seat of the High Court is situated at Jodhpur. It being the judicial capital of the State the principal seat of the Board of Revenue should also be established at Jodhpur. Not establishing the Board of Revenue at Jodhpur is in contravention of the law laid down by the Hon'ble Supreme Court in the case of *S.P. Sampath Kumar v. Union of India* ¹

6. The case of the petitioner further is that having recognized Jodhpur to be the judicial capital of the State, as and when any Court was created in the State, it should have been established at Jodhpur. But due to continued political and executive neglect the border districts like Jodhpur has been neglected. It has resulted in imbalanced development of the State. The petitioner's further case is that the respondent's action is arbitrary and unreasonable. Under the Constitution the State Government is obliged to provide remedy to the litigants at their door steps. By not constituting the Board or at least a Bench of the Board of Revenue at Jodhpur, the State has failed to discharge its constitutional obligation.

7. The State of Rajasthan has submitted in its written reply that the case of the petitioner is based on wild allegations. The State has contended that the petitioner Associations being of the Advocates have made allegations of vested and political reasons. Such allegations are not supported by facts. Making of such allegations of

imbalance development, according to the respondent, appear to be motivated politically. No discrimination has been made by the State as far as Western Rajasthan is concerned. The development of a particular area depends upon geographical conditions, climate, availability of natural resources. The State in its reply has given reasons for every tribunal's establishment at various places. As regards Board of Revenue it has been stated in its reply that the cases pending before the circuit bench of Jodhpur in the category of S.B. are 479 which does not justify, according to the respondent, the establishment of a bench at Jodhpur. A circuit bench is already visiting Jodhpur in every alternate month. Looking to the pendency the feasibility of incurring high financial expenditure was not considered fit because for establishing a bench infrastructure facilities are required to be created which require high financial expenditure.

8. Rajasthan Revenue Bar Association, Ajmer had also joined issue with the petitioner. By the orders of the Hon'ble Supreme Court they were permitted to be heard before this Court. The Revenue Bar Association Ajmer in its reply has submitted that at the time of merger of Ajmer with the State of Rajasthan, the Government of India appointed a Committee. That Committee recommended the establishment of the Board of Revenue at Ajmer.

9. The distance of Ajmer from various places is almost such that it would make no difference location wise. It has been contended by the answering Bar Association that the circuit benches are being held as per the direction of the Chairman of the Board of Revenue. According to the answering Bar Association the Board of Revenue is not a Tribunal constituted under Article 323 A of the Constitution but it is the highest revenue court in the State. According to the answering Bar Association the law laid down by the Apex Court in the case of Sampath Kumar (AIR 1987 Supreme Court 386) (supra) is not applicable in the present case, firstly because the Board is not a Tribunal constituted under Article 323A of the Constitution and secondly because the observations made by the Hon'ble Supreme Court in the case of Sampath Kumar (supra) are based on the concession given by the Attorney General. In any case, the circuit bench is being held at Jodhpur and it is the discretion of the Chairman of the Board of Revenue to regulate the functioning of the Board of Revenue and looking to the work of the Court the benches are assigned the work.

10. Mr. M.S. Singhvi, learned counsel appearing for the petitioner Association,

contended that Section 6 of the Rajasthan Land Revenue Act, 1956 (referred to hereinafter as 'the Act') provides for the seating's of the Court. Even after the State has been requested by the petitioner Association no efforts were made by the State Government to make a proper assessment of the work at Jodhpur and establish a proper forum at Jodhpur of the Board of Revenue. The State in its reply has given the figures of S.B. and has withheld the figures of D.B. cases. The circuit bench visiting Jodhpur is sitting for such a small period that its seating is almost inconsequential. The learned counsel for the petitioner relied upon the following passages from the case of Sampath Kumar (AIR 1987 Supreme Court 386) (supra) (Para 7) :-

"I may also add that if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is no sufficient work, then a circuit bench of the Administrative Tribunal at every place, where there is a seat of the High Court. I would, therefore, direct the Government to set up a permanent bench and if that is not feasible having regard to the volume of work, then at least a circuit bench of the Administrative Tribunal wherever there is a seat of the High Court, on or before 31st March,1987. That would be necessary if the provisions of the impugned act are to be sustained. So far as rest of the points dealt with in the judgment of Ranganath Misra , J. are concerned, I express my entire agreement with the view taken by him."

11. It was emphasized that the Hon'ble Supreme Court has categorically held that at the place of the seat of the High Court a permanent bench be established and if that is not feasible then at least a circuit bench. In the instant case, no bench has been established and the circuit bench is almost non-functional and, therefore, the law laid down by the Hon'ble Apex Court has been violated by the respondent State.

12. Mr. Singhvi further argued that in its reply the State has only come up with the alibi of financial constraints. No other reason has been assigned. The assignment of financial constraints by the State is not a valid excuse. The State is under an obligation to provide a legal system which promotes justice on the basis of equal opportunity and such mandate is contained in Article 39A of the Constitution of India.

13. Per contra, the learned Advocate General appearing for the State has contested the

claim of the petitioner. The learned advocate General has canvassed that the petitioner Association has no *locus standi* to file the present writ petition as it has no legal right which it can get enforced through the present writ petition. The learned Advocate General has further canvassed that Section 6 of the Act does not give a mandate for establishment of a bench. It only gives power to the Chairman to regulate the functioning of the Board and as and when it is felt necessary by the Chairman of the Board, he discharges his discretion in providing for circuit benches. The Chairman has already exercised his powers vested in him under Section 6 of the Act. The provisions of Section 6 are being given effect to by the Chairman in its letter and spirit and no mandate can be issued in favor of the petitioner in terms of Section 6 of the Act because no such duty is cast in terms of this section.

14. Answering Bar Association has submitted that the ratio of Sampath Kumar (AIR 1987 Supreme Court 386) (supra) relates to the establishment of a bench of the Tribunal and the Board is not a Tribunal. In the instant case, the cause is alleged to be espoused by the Bar Association whereas no public man has come to make a grievance. The petitioner lacks bona fides in maintaining the present writ petition. It has been contended on behalf of the answering Bar Association relying on a decision of the Hon'ble Supreme Court rendered in *Federation of Bar Associations in Karnataka v. Union of India, reported in* ² wherein the Hon'ble Supreme Court has held (Paras 7,9, and 10) :-

"No litigant can claim a Fundamental Right to have the High Court located within proximal distance of his residence. The petitioner does not have a case even on merits. Under Article 214 of the Constitution "there shall be a High Court for each State". Nothing is stated therein as to the establishment of Bench of the High Court at different centers. The question of establishment of a Bench of the High Court away from the principal seat of the High Court, is not to be decided on emotional or sentimental or parochial considerations. The High Court is the best-suited machinery to decide whether it is necessary and feasible to have a Bench outside the principal seat of that High Court. If the High Court does not favor such establishment, it is pernicious to dissect a High Court into different regions on the ground of political or other considerations. So it is out of the question to decide for establishment of a Bench outside the principal seat of a High Court contrary to the opinion of the Chief Justice of that High Court which has been formed after considering the views of his colleague Judges.

When the Chief Justice of the High Court is a singular office, and when the Advocate General is also a singular office, vivisection of the High Court into different Benches at different regions would undoubtedly affect the efficacy of the functioning of the High Court. Distance factor (to the seat of the High Court) may be a relevant consideration but not the sole consideration nor even decisive consideration in determining the question of establishing other Benches of the High Court, away from the principal seat."

15. Reliance has also been placed on *S.P. Gupta v. Union of India* reported in ³ at page 571 para 974 which has been relied upon by this Court in *Bar Association Sri Ganganagar v. State of Rajasthan*, reported in ⁴ It has also been contended that the establishment of a bench is a matter of policy and in such policy matters judicial review is excluded. Reliance has been placed on *State of Punjab v. Ram Lubhaya Bagga* reported in ⁵

16. Reliance has also been placed on a Division Bench decision of this Court rendered in *Fal Sabzi Kreta Vikreta Vyapar Sangh, Lal Kothi, Sabji Mandi, Jaipur v. State of Rajasthan*, reported in ⁶ wherein this Court observed as under:-

"16. In a very recent judgment reported in (4) *State of Punjab and others v. Ram Lubhaya Bagga and others* ⁷ the Supreme Court has held that the right of the State to change its policy from time to time under the changing circumstances cannot be questioned and that the wisdom of the policy cannot be judicially scrutinized though the Court can consider whether the policy is arbitrary or violative of law."

17. It has been further contended on behalf of the answering Association that in *L. Chandra Kumar v. Union of India* reported in the basic aspect of Sampath Kumar's case (AIR 1987 Supreme Court 386) (supra) has been diluted. The Tribunals were designed to substitute for the High Court, which was negated by the Hon'ble Supreme Court and thus, the reason for the establishment of the Tribunal having been diluted no help can be taken by the petitioner on the strength of the decision rendered in Sampath Kumar's case (supra).

18. We have considered the rival submissions and have also given our thoughtful consideration.

19. The Hon'ble Supreme Court has considered the question of *locus standi* of the Bar Association in espousing the case of the present nature by illustration and has observed as under in S.P. Gupta's case (AIR 1982 Supreme Court 149) (supra) (para 974) :

"It has, however, to be made clear that it cannot be said that lawyers only because they have a right to practice in a Court have 'locus standi' to file petitions in respect of every matter concerning judges, courts and administration of justice. There are many such matters in which they have no 'locus standi' to ask for relief. By way of illustration, lawyers cannot question the establishment of a new court on the ground that their professional prospects would be affected thereby."

20. Further the Hon'ble Supreme Court in a recent case instituted by the Federation of Bar Associations in Karnataka (AIR 2000 Supreme Court 2544) (supra) has observed that a Federation of members of the Bar cannot be considered to be the accredited representative of the litigants and no litigant can claim a fundamental right to get a court located within proximal distance of his residence. Thus, the Hon'ble Supreme Court has clearly laid down that a Bar Association has no fundamental right to espouse a question of the nature raised in the present writ petitions.

21. Learned counsel for the petitioner tried to get out of the law laid down by the Hon'ble Supreme Court by saying that it is not a question of fundamental right alone which can be enforced under Article 226 of the Constitution of India. The High Courts have greater and larger scope to enforce under Article 226 of the Constitution than that of the Hon'ble Supreme Court.

22. We think that there cannot be a dispute about the proposition of law that the High Courts have a greater scope of passing orders required in a particular contingency but then there has to be a right which requires its enforcement in the extraordinary jurisdiction of this Court. The establishment of Court is a question of public policy. A Policy decision is best required to be left to the Government and, thus, we are firmly of the opinion that the present petitioners have no right in asking for establishment of a bench at Jodhpur.

23. Since we have held that the petitioners have no *locus standi* in maintaining the

writ petition, it is not necessary to go into the other questions raised by the petitioners.

24. In this view of the matter, the writ petitions are not liable to succeed on the ground of right of the petitioners to maintain the present writ petitions. That being the position the writ petitions are dismissed as not maintainable.

Petition dismissed.

Cases Referred.

1. (AIR 1987 SC 386)
2. 2000 2 (Suppl) JT 203: (AIR 2000 SC 2544)
3. AIR 1982 SC 149
4. 1995 RRD 232
5. (1998) 4 S.C.C. 117
6. (2000) 2 Raj L.R. 788
7. (1998) 4 SCC 117
8. AIR 1997 SC 1125